



**URGENT**  
**EXECUTIVE OFFICE OF THE PRESIDENT**

**OFFICE OF MANAGEMENT AND BUDGET**

WASHINGTON, D.C. 20503

March 31, 1989

OCA 1105-89

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

Department of State (Bachrach 647-4463)	25
National Security Council (Hughes X3723)	49
Department of Justice (Perkins 633-2113)	17
Department of Defense (Brick 697-1305)	06
Central Intelligence Agency	

SUBJECT: Commerce draft report on Section 6 of S. 347,  
Antiterrorism and Arms Export Amendments of 1989.

NOTE: We have been advised by Commerce that Mosbacher  
has expressed his interest to send this letter ASAP.

The Office of Management and Budget requests the views of your  
agency on the above subject before advising on its relationship  
to the program of the President, in accordance with OMB Circular  
A-19.

A response to this request for your views is needed no later than  
Tuesday, April 4, 1989.

Questions should be referred to **SUE THAU/ANNETTE ROONEY**  
(395-7300), the legislative analyst in this office.

*Ronald K. Peterson*

RONALD K. PETERSON FOR  
Assistant Director for  
Legislative Reference

Enclosure

cc: J. Eisenhower  
C. Boyden Grey/S. Rademaker  
A. Raul/T. Thiele  
C. Beebe  
L. Kaplan

**URGENT**

Honorable Donald W. Riegle, Jr.  
Chairman, Committee on Banking,  
Housing, and Urban Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This is concerning a provision of the anti-terrorism bill that has just come to our attention. S. 347 has been reported by the Committee on Foreign Relations. Section 6 of that bill amends the Arms Export Control Act ("AECA") and provides that State Department decisions on what items are defense articles or defense services shall be "final and conclusive."

We seek clarification on whether that language is intended to give the authority to State to override or preempt the Export Administration Act ("EAA") for products with primarily commercial civil uses. I call this to your attention as it may infringe upon the ability of the Commerce Department to carry out its duties under the Export Administration Act. The major problem is that neither the AECA nor the EAA provides a standard to define a defense article or defense service.

We believe Congress should make clear that a product is not a defense article unless it has a predominant military application. I understand industry has suggested a standard for such a definition. It is our view that if a company believes its product does not meet such a standard, it is permitted to ask Commerce for a classification or jurisdiction determination. Commerce is required by the EAA to respond to such a request. If there is a reasonable question as to whether the product properly falls under the Munitions List or the Commodity Control List, Commerce consults with the Department of State.

When a particular product falls within the grey area between the two lists, as is often the case, we believe Commerce should be an equal partner in the interagency process to determine how the line should be drawn to describe the jurisdiction of each agency. A reason why there is a "grey area" is that compared to Commerce's specific control list, the Munitions List contains broad, general categories. The breadth of these categories permits State to deem a product a defense article even though its uses are predominantly civilian and commercial. Such a decision can subject civil products to a far more cumbersome process and more restrictive export policies intended only for weapons and ammunition.

I have written Chairman Fascell regarding a similar provision in a bill pending in the House. I request that this matter be examined by the Banking Committee and the Foreign Relations Committee in order to provide clarification for Commerce and State to carry out our respective duties.

Sincerely,

Robert A. Mosbacher